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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/688,979

10/21/2003

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82100459

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22879 7590 05/02/2012

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EXAMINER

MILLER, BRANDON J

ART UNIT

PAPER NUMBER

2617

NOTIFICATION DATE

DELIVERY MODE

05/02/2012

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEPHAN BRAUN and SERGE MORO

Appeal 2010-002862
Application 10/688,979
Technology Center 2600

Before BRADLEY W. BAUMEISTER, ERIC B. CHEN, and
JENNIFER S. BISK, *Administrative Patent Judges*.

BISK, *Administrative Patent Judge*.

DECISION ON APPEAL

SUMMARY

This is an appeal under 35 U.S.C. § 134 from the Examiner's rejection of claims 1-18, all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

Claims 1, 2, 7-9, and 14-17 stand rejected under 35 U.S.C §103(a) as unpatentable over Fosdick (US 5,752,041; May 12, 1998) and Lim (US 6,732,181 B2; May 4, 2004 (filed June 26, 2002)).

Claims 3-6, 10-13, and 18 stand rejected under 35 U.S.C §103(a) as unpatentable over Fosdick, Lim, and Mougi (US 2001/0037403 A1; Nov. 1, 2001).

We reverse.

STATEMENT OF THE CASE

Appellants' invention relates to a method and apparatus for operating a telecommunication platform in which traffic capacity to a particular communications network is based on the activation of license keys. *See* Abstract. Representative claim 1, reproduced below with emphasis added, is illustrative of the claimed subject matter:

1. A telecommunications platform having a plurality of communications links, each link providing a certain amount of traffic capacity to a communications network, of which only a portion of the links to the communications network are enabled for use through the activation of a first base license key, comprising:

a licensing framework for *activating an upgrade license key to enable additional ones of the plurality of links to the communications network to increase the total amount of traffic capacity* to the communications network; and

a traffic monitoring element for measuring the traffic level of the platform and for generating data related to the measured traffic level for determining whether the number of links to the communications network which are used is greater than that provided for by the base license key.

In concluding that claim 1 would have been obvious, the Examiner finds that Fosdick discloses every recited feature of representative claim 1, except for a telecommunications platform, a license key, and activating an upgrade license key. The Examiner cites Lim as teaching these features.

Ans. 4.

Appellants argue that claim 1 is patentable because the combination of Fosdick and Lim fails to suggest, “activating an upgrade license key which enables additional links to the communications network to increase the total amount of *traffic capacity* . . .” Br. 5 (emphasis modified).

ANALYSIS

The dispute in this case boils down to whether a person of ordinary skill in the art would have found the disputed limitation to be obvious given Fosdick’s description of transferring a token representing an application license from one system to another within a distributed system. Br. 6-8; Ans. 12-14. There is no dispute that the transfer of a use token from system A to system B in Fosdick results in an increase in the number of uses allowed to the licensed program within system B. Ans. 13; Br. 6. The dispute is whether these additional uses “increase the total amount of traffic capacity” as claimed. Br. 6.

Appellants argue that the additional uses of system B in Fosdick may demonstrate an increase in the amount of *traffic* to that system, but not an

increase in *traffic capacity*. Br. 6. The Examiner finds that “network usages relate to certain amount of traffic capacity.” Ans. 4. The Examiner thus, concludes that the additional uses in Fosdick are analogous to enabling additional communication links and asserts that “[t]his also clearly shows that the transfer of the use token increases the total amount of traffic capacity to the system because the number of uses allowed in system B increases.” Ans. 13-14.

We agree with the Appellants. We are not persuaded that Fosdick discloses, or would have made obvious to one of skill in the art, increasing traffic capacity. Neither the Specification nor Fosdick assigns special meaning to the terms “traffic” or “traffic capacity.” In fact, Fosdick does not refer to traffic capacity at all. Instead, it mentions traffic only in reference to the management of tokens. *See, e.g.*, Fosdick, col. 5, ll. 16-19 (“This cache design [for controlling tokens] thus reduces license-related network traffic within distributed data processing system **8** and improves system performance.”). Using the common and plain meanings of the terms, the additional uses added upon transfer of a token in Fosdick appear to increase traffic¹ to system B, but not the maximum amount of traffic capacity² that can be accommodated to system B.

For these reasons, we conclude that the Examiner has not upheld the required burden of establishing a *prima facie* case of obviousness. *In re Sullivan*, 498 F.3d 1345, 1351 (Fed. Cir. 2007) (“It is well settled that the

¹ Traffic: “The amount of activity during a given period of time over a circuit, line or group of lines, or the number of messages handled by a communications switch.” NEWTON’S TELECOM DICTIONARY 843 (20th ed. 2004).

² Capacity: “1. The information carrying ability of a telecommunications facility.” NEWTON’S TELECOM DICTIONARY 150 (20th ed. 2004).

PTO bears the initial burden of presenting a prima facie case of unpatentability.”) (internal quotation marks omitted). We therefore, do not sustain the rejection of representative claim 1 and claims 2, 7-9, and 14-17, which were not argued separately. Br. 7-8.

Appellants point to the same deficiency for the separate obviousness rejections over the combination of Fosdick, Lim, and Mougi. Br. 8. For the reasons discussed above, we likewise, do not sustain the rejection of claims 3-6, 10-13, and 18.

DECISION

The Examiner’s decision rejecting claims 1-18 is reversed.

REVERSED

gvw